

FIRST AMENDED AND RESTATED
JOINT EXERCISE OF POWERS AGREEMENT
HOMEOWNERSHIP PROTECTION PROGRAM

This First Amended and Restated Joint Exercise of Powers Agreement (“Agreement”) for the Homeownership Protection Program is dated as of _____, 2012 (“Effective Date”), and is by and among the County of San Bernardino (“County”), the City of Ontario (“Ontario”), and the City of Fontana (“Fontana”) (collectively, the “Charter Members of the Authority” or “Charter Members”). Individual parties to this Agreement also may be referred to individually as a “Party” and collectively as “the Parties.”

RECITALS

A. Each Party is a public agency authorized and empowered to contract for the joint exercise of powers and to jointly exercise any power common to them under Article 1, Chapter 5, Division 7, Title 1, Section 6500 *et seq.* of the California Government Code. The County of San Bernardino is a body corporate and politic organized and operating under the provisions of Government Code Section 23000 *et seq.* The City of Ontario is a municipal corporation, organized and existing under the laws of the State of California. The City of Fontana is a municipal corporation, organized and existing under the laws of the State of California.

B. For the past four years, the communities within the Parties’ jurisdiction have been adversely affected by an unprecedented economic downturn. Unemployment has reached record high levels, revenue to local governments throughout California has dropped to historic lows, and a drop in household income, particularly for working families, has resulted in widespread foreclosures of homes, depriving thousands of the Parties’ residents of the benefits of home ownership. Concomitantly, home values in the Parties’ jurisdictions have plummeted, resulting in “underwater loans” or “negative equity”—where the outstanding principal balance on the home loan exceeds the market value of the house—and accordingly increasing the likelihood of further foreclosures, inhibiting the ability to refinance, and dampening consumer confidence and economic activity.

C. The Parties wish to enter into a joint powers agreement that will establish a joint powers authority (“Authority”) to assist in preserving home ownership and occupancy for homeowners with negative equity within the Parties’ jurisdictions, avoid the negative impacts of underwater loans and further foreclosures, and enhance the economic vitality and the health of their communities (the “Homeownership Protection Program” or “Program”). The Program may include the Authority’s acquisition of underwater residential mortgage loans by voluntary purchase or eminent domain and the restructuring of these loans to allow homeowners to continue to own and occupy their homes. The Program expressly excludes the power to acquire homes by eminent domain.

D. The governing board of each Party has determined that it is in such Party's best interest and in the public interest that this Agreement be executed and that it participate as a Party of the Authority.

The Parties therefore agree as follows:

1. Formation of the Authority

Under Chapter 5, Division 7, Title 1 of the Government Code of the State of California (commencing with Section 6500) (as amended from time to time), the Charter Members hereby create a separate joint exercise of powers agency which is named the Homeownership Protection Program Joint Powers Authority (the "Authority").

2. Parties to Agreement

Each Charter Member certifies that it intends to, and does, contract with every Charter Member that is a signatory to this Agreement and, in addition, with such other entities as may later be added as Parties under Section 4.1.7 of this Agreement. Each Charter Member also certifies that the deletion of any Charter Member from this Agreement does not affect this Agreement nor each remaining Charter Member's intent to contract with the other Charter Members then remaining.

3. Purposes and Objectives

The purposes and objectives of this Agreement are to establish the Authority, to provide for its governance and administration, and to define the rights and obligations of the Parties. This Agreement authorizes the Authority to study and undertake the Homeownership Protection Program, which may include Preliminary Planning (as defined in Section 5), developing cost estimates, and conducting public outreach. Upon a determination that the Program would be in the best interests of the communities served by the Authority, the Authority may elect to proceed with the final planning and implementation of the Program. This Agreement does not legally bind or otherwise commit the Authority to proceed with the Program unless and until the Authority approves the Preliminary Planning for the Program and complies with the California Environmental Quality Act ("CEQA").

4. Administration of the Authority

The Charter Members hereby establish the Authority as a separate public agency under Government Code Sections 6500 *et seq.* The Authority shall have the powers common to the Parties to carry out the purposes set forth in this Agreement. Except as otherwise authorized or permitted by Government Code Sections 6500 *et seq.*, and for purposes of, and to the extent required by Section 6509 of the Government Code, the Authority is subject to the restrictions on the manner of exercising the powers of the City of Ontario as shall be specified in the Bylaws. The Authority shall have the power to perform all acts necessary in the exercise of

these common powers to develop and implement the Program, including but not limited to the following specific powers:

- a) To make and enter into contracts, including intergovernmental agreements;
- b) To incur debts, liabilities and obligations; provided that no debt, liability, or obligation of the Authority is a debt, liability, or obligation of any Party except as separately agreed to by a Party;
- c) To employ agents and employees, consultants, managers and administrators, and contract for professional services with public or private entities or persons;
- d) To acquire by voluntary purchase, gift, eminent domain, or otherwise home loans and/or the deeds of trusts securing those loans (or partial interests therein or thereto);
- e) To own, maintain, and manage home loans and/or the deeds of trusts securing those loans (or partial interests therein or thereto) acquired by the Authority, including, but not limited to, modification, restructuring, hypothecating, assigning, pledging, securitizing, conveying, and reconveying those loans and deeds of trust (or partial interests therein or thereto);
- f) To acquire real and personal property (or partial interests therein or thereto) by purchase, gift, or lease, and hold, manage, maintain, and dispose of such property;
- g) To apply for, accept, receive, collect, invest, administer and disburse monies, grants, loans, and other aid from any agency of the United States of America, the State of California, or any other public or private entity or person;
- h) To sue and be sued in its own name,
- i) To receive contributions and donations of property, funds, services, and other forms of assistance from any source;
- j) To execute and deliver certificates of participation, issue revenue bonds, and issue other forms and evidence of indebtedness and grant security interests, as provided by law;
- k) To carry out other duties as required to accomplish other responsibilities as set forth in this Agreement;

- l) To assign, delegate, or contract with a Party or third party to perform any of the rights and duties of the Board, including, but not limited to, acting as Administrator for the Authority;
- m) To dispose of, divide, and distribute any property acquired by the Authority as a result of this Agreement upon termination of this Agreement;
- n) To form public benefit non-profit corporations or other affiliated entities to carry out the provisions of this Agreement or the Program, as permitted by law;
- o) To exercise all other powers necessary and proper to carry out the provisions of this Agreement; and
- p) To establish by-laws by which the Board of Directors shall operate.

The Program expressly excludes the power to acquire homes by eminent domain.

4.1 Board of Directors

The governing body of the Authority is a Board of Directors (“Board”) composed of members appointed by the Charter Members as set forth in Section 4.1.2. All powers of the Authority shall be exercised by the Board unless delegated to committees, the Administrator, or as otherwise specified.

4.1.1 *Creation.* The Board is responsible for the overall administration of the Authority and the successful development and implementation of the Program.

4.1.2 *Composition.* The Board will be composed of five (5) board members from the Charter Members of the Authority: two (2) appointed by the County, one (1) each appointed by Ontario and Fontana, and one (1) appointed by majority vote of the four (4) board members appointed by the County, Ontario and Fontana. The members of the Board shall be current employees (administrators, not elected officials) of the Parties. Each Board member serves at the will of the appointing authority. Each appointing authority shall designate one alternate director to serve in the absence of the appointing authority’s appointed member(s). Alternate directors must be current employees (administrators, not elected officials) of their respective agencies.

4.1.3 *Quorum and Votes Needed For Action.* A quorum of the Board consists of three members of the Board or their alternates, with at least one member or alternate present for the County. A minimum of three votes in the affirmative are necessary for the Board to take action. If no County Board member or alternate is present for two consecutive regular or duly noticed special meetings, a quorum of the Board will then consist of three Board members or alternates, with at least one member or alternate present for each of the other Parties, and the affirmative vote of a majority of the quorum will be necessary for the Board to take action.

4.1.4 *Meetings.* The Board shall hold regular meetings at such place and time as the Board may establish by resolution, but shall not meet less frequently than once per quarter. The Board may hold special meetings of the Board as needed to carry out the purposes and objectives of the Authority. Meetings of the Board will be held in compliance with the Ralph M. Brown Act, Government Code Sections 54940 *et seq.*

4.1.5 *Proceedings.* A Chair will preside at Board meetings, and in the absence of the Chair, a Vice Chair. The Board will select the Chair and Vice Chair from its elected members annually. The Board members shall not receive any compensation for their service from the Authority but they shall be entitled to the reimbursement of any actual and necessary expenses incurred in the performance of their official duties for the Authority.

4.1.6 *Budgets and Contract Awards.* The Board shall adopt an annual budget. The approval of the Board by resolution shall be required for all contracts and purchases of the Authority. Each Party shall approve its annual contribution, if any, based on the approved budget. A Party that does not approve an annual contribution shall resolve any objection to the annual budget with the Board within thirty (30) days after the Board adopts the budget. A Party's failure to approve an annual budget contribution after thirty (30) days will constitute an Event of Default under Section 13, and grounds for removal under Section 4.1.7.

4.1.7 *Membership.* The Board may admit new Parties to the Authority on terms acceptable to the Parties. The Board may remove an existing Party of the Authority that fails to take timely action with regard to its material obligations to the Authority. The Board shall establish a withdrawal, separation and/or removal procedure in accordance with the requirements of due process, which will at a minimum include notice and an opportunity for a fair hearing. A Party shall not be removed unless the Board finds that there has been an Event of Default under Section 13. In the event a new Party is added to the Authority, said new Party shall not have the right to appoint a representative to serve on the Board unless one of the Charter Members' representatives resigns from serving on the Board or the Charter Member withdraws or is separated, as provided herein, from the Authority. In the event that a Party is added to the Authority and a Charter Member's representative resigns from the Board, or the Charter Member withdraws or is separated from the Authority, the remaining Charter Members of the Board shall select by a two-thirds vote which new Party of the Authority, if two or more, shall have the right to appoint a representative to serve on the Board. All other new Parties not having a representative serving on the Board shall be Associate Parties of the Authority and Parties to this Agreement. Associate Parties shall have all of the rights and obligations of Charter Members, except the right to appoint a representative to service on the Board.

4.1.8 *Authority Counsel.* The Board shall retain and appoint legal counsel for the Authority.

4.1.9 *Consultants.* The Board may retain consultants for public relations, governmental relations, or other purposes needed for the advancement of the interests of the Authority.

4.1.10 *Committees.* The Board may create committees to facilitate work on the Program. The Parties may make members of their respective staffs available to serve on the Authority's committees or to assist with their work.

4.1.11 *Procurement.* The Board shall adopt policies and procedures for the procurement of materials, supplies, equipment, and services or to comply with any other provision of law. The Board may delegate the authority to make certain purchases to a purchasing agent to be appointed by the Board.

4.1.12 *Other Offices.* The Board may create such other offices and appoint individuals to such offices as it considers either necessary or convenient to carry out the purposes of this Agreement.

4.1.13 *Code of Conduct.* The Board shall adopt a Code of Conduct for the Authority.

4.2 Administrator

The County is hereby appointed by the Charter Members as the administrator (the "Administrator") to execute the provisions of this Agreement, implement programs undertaken by the Board and have charge of, handle, and have access to the property of the Authority. The Charter Members acknowledge that this designation may cause potential conflicts of interest to arise and waive any liability on the part of the County arising out of any such conflict of interest. No Party shall compensate the County for services rendered. If the County ceases to serve as the Administrator, the Board may appoint a successor entity, agency, person, firm or corporation, including a nonprofit corporation, to serve as the Administrator to execute the provisions of this Agreement.

4.3 Treasurer

4.3.1 *Duties of Treasurer.* The Treasurer of the County shall be the Treasurer of the Authority and shall be the depository and have custody of all of the money of the Authority from whatever source. The Treasurer shall perform all of the acts required by Government Code Sections 6505 and 6506.5.

4.3.2 *Audits.* The Treasurer shall be the auditor or controller of the Authority. The Treasurer will cause an annual financial audit to be made by an independent certified public accountant with respect to all Authority receipts, disbursements, other transactions and entries into the books. A report of the financial audit will be filed as a public record with each Party. The audit will be filed no later than required by State law. The Authority will pay the cost of the financial audit in the same manner as other administrative costs.

4.3.3 *Replacement of Treasurer.* The Board may from time to time change the designated Treasurer to any person who is qualified by law to occupy such office.

4.3.4 *Accounting and Investments.*

- a) The Authority is responsible for the strict accountability of all funds and reports of all receipts and disbursements. It will comply with every provision of law relating to the establishment and administration of funds, particularly Section 6505 of the Government Code of the State of California.
- b) The funds will be accounted for on a full accrual basis.
- c) The Treasurer will receive, invest, and disburse funds only in accordance with procedures established by the Board and in conformity with applicable law. The Treasurer will procure a fidelity bond in accordance with the Bylaws.

5. Preliminary Planning Activities for the Program

5.1 Preliminary Planning

The first stage of the Program shall consist of preliminary planning activities, including without limitation, the following tasks:

- a) Continuing research for the Program as needed,
- b) Conducting public outreach,
- c) Compliance with the California Environmental Quality Act (“CEQA”), and
- d) Investigation of potential sources for grants, loans, or other outside funding sources.

5.2 Research

The Parties shall perform research for the Program and the costs of the research, if needed, will be shared by the Parties in accordance with the cost allocations described in Section 7 of this Agreement.

5.3 Environmental Compliance

The Authority shall act as the lead agency for the Program for purposes of compliance with CEQA.

6. Final Design of the Program

Upon completion of the Preliminary Planning for the Program set forth in Section 5.1, and in compliance with CEQA, the Board may elect to approve the Program. The Board may then direct completion of the final design of the Program, including all terms and conditions.

7. Cost Allocation

7.1 Scope of Work

The Board shall prepare and approve of the scopes of work for all work necessary to complete the Program.

7.2 Cost Allocations

The Parties shall equally share the Authority's costs. Upon termination of this Agreement or completion of the Program, whichever occurs first, any surplus money on hand will be distributed to the Parties in proportion to their contributions.

7.3 Public Outreach

The Board may retain consultants and conduct public outreach concerning the Program. If necessary, prior to the effective date of this Agreement, the Parties shall enter into a Cost Sharing Agreement that provides for the Parties to share the costs of such work. The Parties shall share the costs incurred by the Authority to conduct any public outreach beyond the termination of the Cost Sharing Agreement, if any, subject to action by the Authority and the agreement of the Parties.

7.4 Preliminary Facilities Planning Costs

The costs of Preliminary Planning, as set forth in Section 5.1, will be shared between the Parties in accordance with Section 7.2.

7.5 Design of the Program

The cost of developing the design of the Program will be shared between the Parties in accordance with Section 7.2.

7.6 Oversight of the Program

Oversight of the Program will be performed by Authority's Board. The cost of oversight will be paid by the Authority from funding provided by the Parties in accordance with Section 7.2.

7.7 Other Scope Elements

Other costs will be shared in accordance with the mutual agreement of the Parties.

8. Preliminary Description of the Program

The Program may include the Authority's acquisition of underwater residential mortgage loans by voluntary purchase or eminent domain and the restructuring of these loans to allow homeowners to continue to own and occupy their homes. The Program expressly excludes the power to acquire homes by eminent domain.

9. Ownership of Program

During the term of this Agreement, ownership of the Program will be held by the Authority.

10. Rescission or Termination of the Agreement; Withdrawal of Parties or Members

10.1 Termination

This Agreement may only be terminated upon the mutual agreement of the Parties through their respective governing bodies.

10.2 Rights upon Breach

In the event one Party refuses further participation under the Agreement or is in breach of its obligations under this Agreement, the remaining Parties may elect to operate the Program on such terms as they may mutually agree upon. The remaining rights and duties upon the breach will be determined in accordance with Sections 25 through 27 of this Agreement.

10.3 Rights upon Withdrawal

Each Party shall have the right to withdraw from the Agreement by giving written notice of withdrawal no later than ninety (90) days after the Party becomes a Party to this Agreement. No Party may withdraw from the Agreement until that Party has fully paid its share of the Program's costs incurred or committed to by the Authority prior to the date of withdrawal. Withdrawing Parties shall have no right or entitlement to any further participation in the Program and shall be prohibited from contracting with any Program consultant, independent contractor, affiliate or subsidiary of a consultant or independent contractor to implement a similar Program for a period of two years following the effective date of said withdrawal.

11. Independent Contractor Status

The Parties are, and shall be, acting at all times as independent contractors, and all employees of the Parties are solely employees of each respective Party and not the agents or employees of the other Parties or of the Authority.

12. Term

This Agreement shall continue in force and effect until terminated in accordance with Section 10.1.

13. Event of Default

The failure of a Party to comply with any provision of this Agreement that has a material and adverse effect on any other Party will constitute an Event of Default under this Agreement; except that the defaulting Party shall first have a period of thirty (30) days following receipt of notice from the other Party of such failure to comply to cure such failure, or if such cure cannot be effected within such thirty (30) day period, such period will extend for a total of sixty (60) days, so long as the defaulting Party is diligently trying to cure the failure throughout such period and such failure does not materially adversely impact the implementation of the Program.

14. Dispute Resolution

Representatives of the Parties shall meet and use their best efforts to settle any dispute, claim, question or disagreement (a "Dispute") arising from or relating to this Agreement or to the interpretation of this Agreement. To that end, representatives of the Parties shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to all Parties. If the Parties do not reach such a solution within a period of thirty (30) days after the first meeting regarding a Dispute, then the Parties shall convene a meeting of the Board within sixty (60) days after the first meeting of the Party representatives regarding a Dispute and request that the Board settle the Dispute at the meeting. If the Parties do not settle the Dispute at the Board meeting or within five (5) calendar days after the Board meeting, either Party may request a voluntary mediation of the Dispute to be held within thirty (30) days after the request for mediation. If a mediation is not requested or is not successful, any Party may pursue any and all legal and equitable remedies that may be available. Any Party with a Dispute over the amount of money to be paid to the Authority or a Party shall first pay the disputed amount to the Authority or other Party under protest before commencing dispute resolution under this section. The respective costs for resolving any Dispute shall be borne by the individual Parties, not the Authority.

15. Limitation on Liability for Debts and Obligations

Under Government Code Section 6508.1, the debts, liabilities, and obligations of the Authority do not constitute the debts, liabilities, or obligations of any Party to this Agreement. A Party may separately contract for or assume responsibility for specific debts, liabilities, or obligations of the Authority. Notwithstanding any other provision of this Agreement, no fee, assessment or charge may be levied against a Party without express consent of the Party.

16. Fiscal Year

The first fiscal year of the Authority is the period from the date of this Agreement through June 30, 2012. Each subsequent fiscal year of the Authority begins on July 1 and ends on June 30.

17. Force Majeure

The Parties will not be deemed to be in default where failure or delay in performance of any of its obligations (other than payment obligations) under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, actions of legislative, judicial, executive, or regulatory government bodies or other cause, without fault and beyond the reasonable control of such Party. If any such events shall occur, the time for performance by either Party of any of its obligations under this Agreement will be extended by the Parties for the period of time that such events prevented such performance. Upon the occurrence of an event of Force Majeure, the affected Party shall: (i) promptly notify the other Party of such Force Majeure event, (ii) provide reasonable details relating to such Force Majeure event and (iii) implement mitigation measures to the extent reasonable.

18. Insurance

The Authority shall procure, carry, and maintain in full force and effect at all times during the term of this Agreement, at its sole cost and expense, and until the termination of this Agreement, the following insurance coverage with the following limits of insurance, which shall be maintained with insurers and under forms of policies satisfactory to the Parties. The insurance that the Authority is to provide under this Section 18 must be written as "occurrence" type policies, must provide for defense costs "ex-limits," and must protect the Authority and the Parties, their directors, officers, employees and agents, and such other persons, firms, or corporations as the Parties may designate (collectively "Insured Parties") as having an interest in the Program, in such a manner and at such amounts as set forth below:

18.1 Commercial General Liability Insurance

The Authority shall procure, carry and maintain commercial general liability insurance to include coverage for all operations of the Authority under this Agreement, including, but not limited to the following: (a) premises, operations and mobile equipment liability; (b) completed operations and products liability; (c) blanket contractual liability; (d) explosion, collapse, and underground hazards; (e) personal injury liability; and (g) protective liability for impacts on the Parties' operations. The Authority shall provide the Commercial General Liability Insurance with limits not less than the following: (i) \$3,000,000.00 each occurrence, or for a combined occurrence of bodily injury and property damage; (ii) \$1,000,000.00 completed operations and products liability; and (iii) \$1,000,000.00 personal and advertising injury. The Authority shall provide the policy with an endorsement for a general aggregate limit per project. Defense costs may not be included in said general aggregate limit.

18.2 Workers' Compensation and Employer's Liability Insurance

If the Authority has any employees, the Authority shall procure, carry and maintain a policy of worker's compensation insurance as required by any applicable law, regulation, or statute. The employer's liability insurance must be provided with limits not less than the following: (i) \$1,000,000.00 each accident; (ii) \$1,000,000.00 disease - policy limits; and (iii) \$1,000,000.00 disease - each employee. The Workers' Compensation and Employer's Liability

Insurance Policy must contain a waiver of subrogation rights against the Parties. The Authority shall provide the Parties with a copy of an endorsement to the policies reflecting this waiver.

18.3 Policies

Within 90 days after the Effective Date of this Agreement, the Authority shall provide policies, relevant endorsements, and certificates of insurance to the Parties evidencing the following:

- a) The insurance policies referred to in this Sections 18 are in place.
- b) That the Parties are to receive thirty (30) calendar days' prior written notice of a policy cancellation or reduction in coverage for any reason. In that regard, the Authority shall not deliver any certificate that simply contains words to the effect that the insurer will "endeavor" to notify the Parties of the cancellation or reduction of the policy or that "the failure to mail such notice shall impose no obligation of any kind upon the company, its agents or representatives."
- c) An endorsement has been made to the policies naming the Parties as additional insureds. The endorsement must be duly-executed and must be in a form acceptable to the Parties. The endorsement must also provide that the insurance afforded to all of the Parties and the additional insureds is primary insurance and that any insurance carried by or afforded to the Parties, their directors, officers, and employees and other Insured Parties is excess and not contributing to the insurance required by this Agreement.
- d) Each of the policies of insurance required by this Agreement must contain "Cross Liability" or "Severability of Interest" clauses. No policy may contain any exclusion regarding loss or damage to property caused by explosion, collapse of buildings or structures or damage to property underground, premises-operation, completed operations, contractual insurance, and independent coverages of the Parties. Each of the policies required by this Agreement must contain a provision or endorsement stating that such insurance, subject to all of its other terms and conditions, applies to the liability assumed by the Authority under this Agreement. Any such endorsement shall be in a form acceptable to the Parties.
- e) The Authority may satisfy minimum coverage amounts listed in Section 18.2 above by a combination of one or more primary insurance policies and umbrella or excess coverage policies on which the Authority is the named insured. The Authority may also use the policies in connection with satisfying the requirements of other obligations imposed in this Section 18.

18.4 Insurers

The Authority shall provide the insurance coverages through insurers that have at least an "A" policyholders rating and an "X" financial rating in accordance with the current Best's Key Rating Guide. In the event the coverage evidenced by any such certificate is canceled or reduced, the Authority shall procure and furnish to the Parties new certificates of insurance and policies conforming to the above requirements at least five (5) days before the effective date of such cancellation. If the Authority fails to procure and maintain any insurance required by this Agreement, the Parties may procure such insurance and charge the expense to the Authority or the Parties may terminate this Agreement upon failure of the Authority to procure such insurance within forty-eight hours written notice demanding the Authority do so, at their sole discretion. The Parties' failure to enforce any provision of this Section 18 will not act as a waiver of the Authority's obligation to procure the required insurance or as a waiver of enforcement of any of the provisions of this Section 18 at a later date. The Parties are not obligated to procure or maintain the above required insurance if the Authority fails to do so. All requirements of this Section 18 apply to the Authority's contractors and sub-contractors, and the Authority shall cause all of its contractors and sub-contractors to comply with the provisions of this Section 18 and be responsible to the Parties for such compliance. The foregoing requirements constitute the Authority's minimum insurance requirements.

18.5 Waiver and Release

The Authority waives and releases the Parties from any damages resulting from any interruption of the Authority's business, including but not limited to, damages resulting from any loss of income or business resulting from the Parties' actions relating to the cancellation, termination, or expiration of the Authority's insurance policies. The Authority further releases and relieves each of the Insured Parties and waives its entire right of recovery for loss or damage arising out of or incident to the perils insured against which perils occur involving the Program, whether due to the negligence of the Insured Party or the Authority, or its agents, employees, contractors, and/or invitees. This is a waiver of subrogation clause and the Authority shall, upon obtaining the policies of insurance required by this Section 18, give notice to the insurance carrier or carriers that the foregoing mutual waiver of subrogation is contained in this Agreement.

18.6 Additional Insurance

The Parties retain the right at any time to review the coverage, form, and amount of the insurance required by this Agreement. If, in the opinion of the Parties, the insurance provisions in this Agreement do not provide adequate protection for the Parties, the Parties may require the Authority to obtain insurance sufficient in coverage, form, and amount to provide adequate protection. The Parties' new requirement will be reasonable, and will be designed to assure protection from and against the kind and extent of risks that exist at the time a change in insurance is required. The Parties shall notify the Authority in writing of changes in the insurance requirements, and if the Authority does not deposit copies of acceptable insurance with the Parties incorporating such changes within thirty (30) days of receipt of notice, the

Authority shall be in default without further notice to the Authority, and the Parties will be entitled to all legal remedies. The procuring of such required policy or policies of insurance will not be construed to limit the Authority's liability under this Agreement nor to fulfill the hold harmless provisions and requirements of this Agreement.

18.7 Defense and Indemnity

The Authority shall assume the defense of and indemnify and save harmless each Party to this Agreement and its respective officers, agents and employees, from all claims, losses, damages, costs, injury and liability of every kind, nature and description directly or indirectly arising from the performance of any of the activities of the Authority undertaken pursuant to this Agreement.

19. Notices

All notices required or permitted under this Agreement must be in writing and will be deemed delivered: (i) when delivered in person; (ii) on the third day after mailing, if mailed, postage prepaid, by registered or certified mail (return receipt requested); (iii) on the day after mailing if sent by a nationally recognized overnight delivery service which maintains records of the time, place, and recipient of delivery; or (iv) upon receipt of a confirmed transmission, if sent, telecopy or facsimile transmission:

County of San Bernardino
Attention: Chief Administrative Officer
385 North Arrowhead Avenue
5th Floor
San Bernardino, CA 92415-0120
909-387-5418
909-387-5430 (fax)

City of Ontario
Attention: City Manager
303 East "B" Street
Ontario, CA 91764
909-395-2010
909-395-2189 (fax)

City of Fontana
Attention: City Manager
8353 Sierra Avenue
Fontana, CA 92335
909-350-7600
909-350-6613 (fax)

20. Successors And Assigns

The terms and conditions of this Agreement inure to the benefit of and will be binding upon the Parties and their respective heirs, representatives, successors and permitted assigns.

21. Further Acts and Assurances

The Parties shall execute, acknowledge, and deliver any and all additional papers, documents, and other assurances, and shall perform any and all acts and things reasonably necessary, in connection with the performance of the obligations under this Agreement and to carry out the intent of the Parties.

22. Captions

The captions in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affects this Agreement. Words of any gender in this Agreement will be held to include any other gender and words in the singular number will be held to include the plural when the sense so requires.

23. Severability

Should it be found that any part of this Agreement is illegal or unenforceable, such part or parts of this Agreement will be of no force nor effect and this Agreement will be treated as if such part or parts had not been inserted.

24. Entire Agreement

All previous negotiations between the Parties or their agents or representatives with respect to this Agreement are merged in this Agreement.

25. Modifications

This Agreement will not be modified in any manner except by an instrument in writing executed by the Parties or their respective successors in interest.

26. Interpretation

Each Party has participated in negotiating and drafting this Agreement, so if an ambiguity or a question of intent or interpretation arises, this Agreement is to be construed as if the Parties had drafted it jointly, as opposed to being construed against a Party because it was responsible for drafting one or more provisions of this Agreement.

27. Governing Law & Venue

This Agreement is to be governed by and construed according to the laws of California. Venue for all disputes involving this Agreement shall be the County of San Bernardino.

28. Assignment

No Party may assign a right, claim, or interest it may have under this Agreement. No creditor, assignee or third party beneficiary of a Party has a right, claim or title to any part, share, interest, fund or asset of the Authority. However, nothing in this Section prevents the Authority from assigning any interest or right it may have under this Agreement to a third party.

29. Representations and Warranties

No representations or warranties are made or have been relied upon by either Party other than those expressly set forth in this Agreement, if any.

30. Cooperation

The Parties shall fully cooperate with each other in conjunction with this Agreement and act reasonably in the exercise of any discretion to assure that they all continue to benefit from the Program. Each Party to this Agreement shall execute and deliver to the other all instruments and documents as may be reasonably necessary to carry out this Agreement to provide and secure to each Party the full and complete enjoyment of its rights and privileges under this Agreement.

31. Other Agreements

The Parties and the Authority may enter into any other agreement(s) that may be necessary for fulfilling the purpose and objective of the Authority.

32. Agreement Not for Benefit of Third Parties

This Agreement will not be construed as or deemed to be an agreement for the benefit of any third party or parties, and no third party or parties will have any right of action under this Agreement for any cause whatsoever. Any services performed or expenditures made in connection with this Agreement by any Party will be deemed conclusively to be for the direct protection and benefit of the inhabitants and property within the jurisdiction of such Party. No person or entity, other than the Parties and their permitted successors and assigns, is authorized to enforce the provisions of this Agreement.

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The Parties are signing this Joint Exercise of Powers Agreement as of the date stated in the introductory clause.

COUNTY OF SAN BERNARDINO

By: _____
Chairperson

Attest:

By: _____
Clerk of the Board of Supervisors

Approved as to Form:

COUNTY COUNSEL

By: _____

CITY OF ONTARIO

By: _____
Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney

CITY OF FONTANA

By: _____
Mayor

Attest:

City Clerk

Approved as to Form:

City Attorney